

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-34805-GFK
Chapter 13

Joel L. Johnson and Julie A. Johnson,

Debtor(s).

OBJECTION TO CONFIRMATION

TO: Debtor(s) and Attorney for Debtor(s); Jasmine Keller, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. Wells Fargo Financial Acceptance, a secured creditor of Debtor(s), by its undersigned attorney, makes this objection to the confirmation of the proposed plan of the Debtor(s).

2. This objection is filed pursuant to Fed. R. Bankr. P. 3020(b) and Wells Fargo Financial Acceptance requests this Court to enter an order denying confirmation of Debtor's proposed Chapter 13 plan (the "Plan"). This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sec. 1334(a) and 157(a), 11 U.S.C. §1325 and applicable rules. This is a core proceeding.

3. Hearing on confirmation of the Plan is scheduled for **10:30 am on Thursday, October 28, 2004**, before the Honorable Gregory F. Kishel, in Courtroom No. 228B, U.S. Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101, or as soon thereafter as counsel can be heard.

4. The petition commencing this Chapter 13 case was filed on August 17, 2004 and the case is now pending in this Court.

5. Wells Fargo Financial Acceptance holds a valid, perfected interest in a 1999 Mercury Villager, vehicle identification number 4M2XV11TXXDJ11909 (the "Vehicle"). The value of the Vehicle is \$9,125.00.

6. Copies of Wells Fargo Financial Acceptance's agreement with Debtor(s) (the "Contract") and evidence of perfection of Wells Fargo Financial Acceptance's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

7. The Plan provides for interest to accrue at 1.34% on Wells Fargo Financial Acceptance's secured claim.

8. The interest rate does not comply with the risk formula adopted by the Supreme Court.

9. The Plan does not comply with the provisions of Chapter 13.

10. The Plan does not provide Wells Fargo Financial Acceptance with adequate protection of its interest in the vehicle.

11. Movant gives notice that it may, if necessary, call A. Howard or another representative of Wells.

12. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Wells Fargo Financial Acceptance respectfully requests this Court to enter an order denying confirmation of the Debtor' proposed plan and such other further relief as is just and equitable.

Dated: October 8, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13 Case

Joel L. and Julie A. Johnson,

Btry. No. 04-34805

Debtor(s).

Affidavit of Andrew J. Howard

I, Andrew J. Howard, of Wells Fargo Financial Acceptance, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. Wells Fargo Financial Acceptance has a security interest in the following (the "Collateral"):

1999 Mercury Villager VIN# 4M2XV11TXXDJ11909.

2. \$10,656.55 is the outstanding balance under the contract as of October 7, 2004.

3. \$1,905.18 is the amount of the existing delinquency under the contract.

4. \$2,125.00 is the fair market value of the Collateral.

5. Yes Appropriate insurance has been verified.

6. N/A is the payment default under the Chapter 13 Plan.

Further your affiant sayeth not.

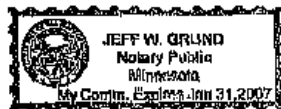
Dated: 10/7/200

Andrew J. Howard

Andrew J. Howard
Bankruptcy Specialist
Wells Fargo Financial Acceptance

Subscribed and sworn to before me on October
7, 2004

Jeff W. Grund
Notary



4896420

VEHICLE INSTALLMENT CONTRACT AND SECURITY AGREEMENT		NO. 1111 WATER WHEEL 12000 RD. 60TH ST. STILLWATER, MO 65002 "We" and "you" mean the dealer herein, its successors and assigns.		JM JULIE AND 203 SAINT CROIX AVE E STILLWATER, MO 65002-1011 "Your" and "your" mean each Buyer herein, and their heirs, assigns and successors.	
Date	12/06/2002				

SALES: You agree to purchase from us, over time, the Motor Vehicle (Vehicle) and service (Service) specified below. Your purchase is subject to the terms and conditions of this contract and security agreement (Contract). The Vehicle is sold to you in its present condition, together with all parts, accessories and attachments.

Description of Motor Vehicle:

Year	1999	VIN	4N3NC11Y7GJ11969	Other	
Make	MERCUURY	Is New	<input type="checkbox"/> New	Is Used	<input type="checkbox"/> Used
Purpose	Passenger				

SECURITY: To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessories, attachments, modifications and equipment (whether in or on the Vehicle, together with all parts, accessories and attachments) and proceeds of the Property. You give us a security interest in proceeds of any insurance (including proceeds of any insurance policy which you have purchased with this Contract).

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay us the principal amount of \$1,2634.04, plus finance charges according to the schedule set forth in the Truth in Lending Disclosure. You agree to pay the Contract according to the payment schedule and late charge provisions set forth in the Truth in Lending Disclosure. You also agree to pay any additional charges according to the terms and conditions of this Contract.

☐ **LOAN ADMINISTRATION FEE:** You agree to pay an additional, non-refundable loan administration fee of \$25.00 that will be paid in cash. ☐ paid pro rata over the contract term. ☐ withheld from the proceeds of this loan which will be included in the periodic payments.

DOWN PAYMENT: You also agree to pay, or apply to the Cash Price, in or before today's date, any cash, note and other items of value (hereinafter referred to as "ITEMIZATION OF AMOUNT FINANCED"). ☐ You agree to make deferred payments as part of this cash down payment as reflected in your Payment Schedule.

TRUTH IN LENDING DISCLOSURE

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS	TOTAL SALE PRICE
The cost of your credit as a yearly rate	The dollar amount that you will pay for the loan	The amount of cash provided to you or for your benefit	The amount you will pay when you have made all scheduled payments	The total cost of your purchase on credit, including prepaid payments of scheduled payments
10.25%	\$680.00	\$1,2634.04	\$1,2634.04	\$1,2634.04

Payment Schedule: Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
48	265.74	MONTHLY BEGINNING 01/19/2003

Security: You are giving a security interest in the Motor Vehicle purchased, including changes if a payment is more than 10 days late, you will be charged 1% of the past due amount.

Early Termination: If you pay off this Contract early, you will not have to pay a penalty. ☐ If you pay off this Contract early, you will not be entitled to a refund of part of the loan administration fee.

Contract Provisions: You can see the terms of this Contract for any additional information about late payments, default, any required payments before the scheduled date, and prepayment rights and penalties.

ORIGIN INSURANCE: Credit the credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit, but we will not provide them unless you sign and agree to pay the additional premium. If you have such insurance, we will debit it for you (if you qualify for coverage). We are quoting below ONLY the coverage you have chosen to purchase.

Credit Life Insurance:

<input type="checkbox"/> Single <input type="checkbox"/> Joint Term	Term	Rate
<input type="checkbox"/> Single <input type="checkbox"/> Joint Term	Term	Rate

PROPERTY INSURANCE: You will insure the Property according to the Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$500.00. If you get insurance from or through us, you will pay \$ of coverage.

Liability Insurance: This premium is calculated as follows:

<input type="checkbox"/> \$100,000 Deductible Collision Coverage	\$	N/A
<input type="checkbox"/> \$100,000 Deductible Comprehensive Cov.	\$	N/A
<input type="checkbox"/> \$100,000 and \$100,000 Additional Coverage	\$	N/A
<input type="checkbox"/> \$100,000	\$	N/A

Liability Insurance: You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$500.00. If you get insurance from or through us, you will pay \$ of coverage.

NOTICE TO BUYER

(1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely typed-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charges. (4) IMPORTANT: THIS MAY BE A BORROWING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT.

ASSIGNMENT: This Contract and Security Agreement is assigned to: WELLS FARGO BANK, N.A.

Signature: [Signature] Date: 12/06/2002

Signature: [Signature] Date: 12/06/2002

Signature: [Signature] Date: 12/06/2002

Signature: [Signature] Date: 12/06/2002

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
 DRIVER & VEHICLE SERVICES DIVISION
 445 MINNESOTA ST., ST. PAUL, MN 55101
 CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

4896420

First Class
 U.S. Postage
PAID
 Permit No. 171
 St. Paul, MN

JOHNSON JULIE ANN
 JOHNSON JOEL LOREN
 203 E ST CROIX AVE
 STILLWATER MN 55082

CPB946

Year 99	MERC MARC	SVVL SVL	K00908540 TID
VIN 4M2XV11TXXDJ11909		Security Date 12/05/02	Reliant NO

1ST SECURED PARTY

LIEN HOLDER

RETAIN THIS DOCUMENT - See reverse
 side of this form for removing this lien.

WELLS FARGO FINANCIAL INC.
 1 INTL PLAZA #300
 PHILADELPHIA PA 19113

1517512



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-34805-GFK
Chapter 13

Joel L. Johnson and Julie A. Johnson,

Debtor(s).

***MEMORANDUM IN SUPPORT OF
OBJECTION TO CONFIRMATION***

Wells Fargo Financial Acceptance submits this memorandum of law in support of its objection to confirmation in the above-entitled matter.

FACTS

Wells Fargo Financial Acceptance holds a valid, perfected interest in a 1999 Mercury Villager, vehicle identification number 4M2XV11TXXDJ11909 (the "Vehicle").

The Plan provides for interest to accrue at 1.34% on Wells Fargo Financial Acceptance's secured claim.

DISCUSSION

Pursuant to 11 U.S.C. §1325(a)(5), a plan must distribute deferred cash payments equal to the present value of the secured claim. *Rake v. Wade*, 113 S.Ct. 2187, 124 L.Ed.2d 424 (1993). In this case, the Debtor has proposed payments that do not satisfy Wells Fargo Financial Acceptance's secured claim plus a reasonable interest rate. A plan must provide interest to a secured creditor at a rate equal to the "national prime rate" plus a risk factor ("...the courts must choose a rate high enough to compensate a creditor for its risk..."). *Till v. SCS Credit Corp.* Accordingly, the Plan does not meet the confirmation requisites and should be denied.

CONCLUSION

For all of the reasons set forth herein, Wells Fargo Financial Acceptance respectfully requests that the Court deny confirmation of Debtor's Chapter 13 Plan.

Dated: October 8, 2004

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Joel L. Johnson and Julie A. Johnson

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-34805-GFK

Bradley J. Halberstadt, agent of Stewart, Zlmen & Jungers, attorney(s) licensed to practice law in this court, with office address of with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Objection to Confirmation** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Roseville, Minnesota addressed to each of them as follows:

United States Trustee
Suite 1015
300 South 4th Street
Minneapolis, MN 55415

(Attorney for Debtor(s))
Robert J. Everhart
PO Box 120534
New Brighton, MN 55112

(Trustee)
Jasmine Keller
12 S 6th Street Suite 310
Minneapolis, MN 55402

(Debtor(s))
Joel L. Johnson
4152 Lexington Avenue N.
Shoreview, MN 55126

Julie A. Johnson
203 St. Croix Avenue East
Stillwater, MN 55082

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: October 8, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-34805-GFK
Chapter 13

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Debtor(s).

ORDER

This matter came before this Court for confirmation of the Chapter 13 plan of reorganization of Debtor(s). Appearances were noted in the record. Based upon all the files and records, the Court makes this Order pursuant to the Federal Rules of Bankruptcy Procedure.

IT IS HEREBY ORDERED, That confirmation of the Chapter 13 plan of Debtor(s) is denied.

Dated: _____

Gregory F. Kishel
United States Bankruptcy Judge